

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

MERGER TEAM'S FINAL RECOMMENDATIONS

BROAD ISSUES

1. Overview. We recommend that the Board approve this application.

2. Embraced Proceedings. We recommend that the Board approve the 38 embraced proceedings, which include authorizations relating to 22 construction projects; various trackage rights; and certain limited abandonment requests covering about 60 miles of track.

3. NITL League Settlement With Modifications. We recommend that the Board impose the NIT League settlement agreement, with certain modifications. The agreement requires CSX and NS immediately to begin coordinating with shippers through a Conrail Transaction Council, and to complete their computerized information systems and obtain labor implementing agreements before "Day 1," the date NS and CSX begin integrating Conrail into their respective rail systems. The agreement calls for carrier reporting and Board oversight, and creates certain safeguards for shippers who (a) have contracts with Conrail; (b) use facilities that will become incorporated within Shared Asset Areas; (c) use reciprocal switching provided by Conrail; or (d) will have Conrail single-line service replaced by CSX/NS joint-line service.

We recommend that the Board modify certain terms of the NIT League settlement agreement as follows:

- (a) expand the 3-year oversight provision to 5 years.
- (b) expand the section affording remedies for shippers whose pre-transaction single-line Conrail service will become post-transaction joint-line CSX/NS service so that these remedies apply to and benefit Class III rail carriers at their option.
- (c) expand the reciprocal switching provisions to require preservation of switching agreements in both directions — NS and CSX over Conrail and Conrail over NS and CSX, and in addition, expand these reciprocal switching provisions to Class III railroads that pay switching charges to Conrail.

4. Antiassignment Clauses. We recommend that the Board restrict its approval of applicants' proposal to override antiassignment clauses in shipper contracts, as follows:

(a) Applicants may override antiassignment clauses in nonassignable shipper contracts and assume the terms of those contracts, but only for a period of 180 days from Day 1.

(b) Applicants should be required to give 14 days of prior notice to all shippers and the Board of the date being designated as Day 1.

(c) After 180 days, if the unassignable contract has not expired already, the shipper may elect to continue the contract until its expiration under the same terms with the same carrier, or, without making any showing with regard to service, it may terminate the contract, provided the shipper has given 30 days written notice to the carrier serving it.

5. Contracts/Protective Order. We recommend that the Board immediately issue a decision granting applicants' motion to modify the protective order to allow CSX and NS to examine Conrail's contracts. We further recommend that the Board require applicants to adhere to their representation at oral argument and in their list of proffered conditions to protect the contractual terms of APL Limited from disclosure to CSX's water carrier and intermodal affiliates.

REGIONAL ISSUES

6. East of the Hudson.

(a) We recommend that the Board impose a condition requiring CSX to cooperate with the New York interests in studying the feasibility of upgrading cross harbor float and tunnel operations to facilitate cross harbor movements and alleviate motor vehicle traffic congestion and air pollution in New York City. Specifically, they should participate in New York City's Cross Harbor Freight Movement Major Investment Study set forth in applicants' list of proffered conditions. We further recommend that the Board oversee these issues under its 5-year monitoring program.

(b) We recommend that the Board impose a condition requiring CSX to negotiate an agreement with CP to permit either haulage rights not restricted as to commodity or geographic scope, or unrestricted trackage rights over CSX's line from Fresh Pond (in Queens) to Selkirk (near Albany), under terms agreeable to the parties, taking into account the investment that needs to continue to be made to the line. If the parties have not reached agreement within 60 days of the Board's final decision, the Board should initiate a proceeding to resolve this issue.

We recommend that the Board require CSX to offer to the City of New York to establish a committee for the development of rail traffic to and from the City, with particular emphasis on the Hudson Line, as set forth in applicants' list of proffered conditions.

(c) We recommend that the Board require CSX to discuss with Providence & Worcester the possibility of expanded P&W service over trackage or haulage rights from Fresh Pond to New Haven, CT, focusing on operational and ownership impediments related to service over the line.

(d) We recommend that the Board impose a condition requiring applicants to immediately begin monitoring origins, destinations, and routings for the truck traffic at their intermodal terminals in northern New Jersey and in Massachusetts. We recommend that applicants report on a quarterly basis.

7. Buffalo/Niagara Falls.

(a) We recommend that the Board find that the \$250 maximum reciprocal switching charge negotiated as part of the NIT League agreement should be applied to those points in the Niagara Falls area where Conrail recently replaced its switching charges with equivalent "line haul" moves and charges.

(b) We recommend that the Board require that CSX's trackage rights over the Buffalo Creek line be transferred to Norfolk Southern.

(c) We recommend that the Board initiate a 3-year rate study to assess whether Buffalo-area shippers have been subjected to higher rates because of this transaction.

(d) We recommend that the Board require CSX to meet with regional and local authorities in the Buffalo area to establish a committee for development of rail traffic to and from the Buffalo area, as set forth in applicants' list of proffered conditions.

(e) We recommend that the Board require CSX to adhere to its agreements with CN and CP providing for lower switching fees in the Buffalo area, as set forth in applicants' proffered list of conditions.

(f) We recommend that the Board hold CSX to its representations regarding investment in new connections and upgraded facilities in the Buffalo area, as set forth in applicants' proffered list of conditions.

8. Rochester. We recommend that the Board grant the responsive application filed by Livonia, Avon, and Lakeville Railroad permitting it to cross Conrail's Genesee Junction Yard to forge a new connection with NS via a short movement on the Rochester and Southern Railroad.

9. Chicago Switching District. We recommend that the Board require that applicants adhere to their representations made regarding Chicago that IHB will continue to be managed as a neutral switching carrier. As part of the 5-year oversight condition, we recommend that the Board carefully monitor for any harm requiring remedial action in the Chicago Switching District.

INDIVIDUAL RAILROAD, PORT, AND SHIPPER ISSUES

10. Amtrak and Regional Passenger Railroads. As requested by Amtrak and applicants through their joint settlement agreement, we recommend that the Board monitor transaction related impacts on Amtrak's passenger operations as part of the general 5-year oversight that we are recommending. Pursuant to DOT's request, we also recommend that the Board impose a general regional rail passenger monitoring condition as part of its 5-year oversight. The Board should indicate that it expects applicants to carry through on their commitment to continue to negotiate with commuter authorities such as Metro-North and Virginia Railway Express on issues of mutual importance.

11. Shortline Issues. We recommend that the Board prevent contractual blocking provisions — that make it more costly for shortline carriers to route over Class I carriers other than those from which they have been spun off — from having greater force as the result of this transaction.

12. New England Central Railroad. We recommend that the Board require that applicants grant NECR trackage rights between Palmer, MA, and Springfield, MA.

13. Illinois Central Railroad. We recommend that the Board impose a condition directing CSX and Illinois Central to negotiate a dispatching plan for the short segment of CSX's Memphis line over which Illinois Central has trackage rights. We further recommend that the parties submit their agreement to the Board within 30 days from the effective date of the final decision. If parties are unable to reach an agreement, we recommend that each party submit a proposed agreement for the Board's consideration.

14. Wheeling & Lake Erie Railway Company. We recommend that the Board require applicants to provide certain remedies to W&LE as follows:

(a) overhead haulage or trackage rights access to Toledo, OH, with connections to the Ann Arbor Railroad and other railroads there.

(b) extension of W&LE's lease for the Huron Docks.

(c) overhead haulage or trackage rights to Lima, OH, including a connection to the I&O Railroad.

We also will require that applicants negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's line from Benwood to Brooklyn Junction, WV.

15. Ann Arbor Railroad Company. We recommend that the Board impose a condition to ensure that Ann Arbor's quality interline service under its new Chrysler contract is continued, and that this contract is not undermined.

16. R.J. Corman/Western. We recommend that the Board impose a condition requiring CSX to maintain R.J. Corman's current favorable switching charge of \$60 for 5 years.

17. Gateway Western. We recommend that the Board refuse applicants' request to override the assignment restrictions in Gateway's Cahokia/Willows trackage rights agreements.

18. Philadelphia Belt Line Railroad. We recommend that the Board grant this carrier's request for a declaration that the Philadelphia Beltline principle will not be preempted by Board approval of this transaction.

19. The Elk River Railroad. We recommend that the Board require NS to adhere to representations that it will work with Elk River to establish an appropriate interchange if Elk River completes its proposed build-out, and to discuss rehabilitating or selling to that carrier the line between Falling Rock and Charleston.

20. Housatonic Railroad. We recommend that the Board hold applicants to their representations made at oral argument regarding their dealings with the Housatonic Railroad.

21. Indianapolis Power and Light. We recommend that the Board follow the recommendation of DOJ and impose a condition giving IP&L the choice of having its Stout plant served by NS directly or via switching by INRD (a shortline serving the plant that is controlled by CSX). The Board should further require the creation of a new interchange between NS and Indiana Southern Railroad (at milepost 6) so that IP&L's Stout and Perry K plants will have independent access to nearby coal mines served by Indiana Southern.

22. PSI Energy. We recommend that the Board follow DOJ's recommendations and require that Conrail's dormant trackage rights be transferred to CSX, rather than NS.

23. Aggregate Shippers. We recommend that the Board hold applicants to their representations to provide single-line service by either CSX or NS for the existing movements of certain Ohio aggregate shippers (National Lime and Stone, and Wyandot Dolomite), just as they have agreed to provide for Martin Marietta.

24. Monongahela Coal. We recommend that the Board hold applicants to their representation regarding Monongahela coal. In their application, CSX and NS represented that, although Norfolk Southern will have operational control of Conrail's Monongahela coal lines, CSX will have equal, perpetual access to all current and future facilities in the area.

25. AK Steel Corporation. We recommend that the Board hold applicants to their assurance that both NS and CSX will be available to handle AK Steel's shipments of iron ore moving through the Toledo docks.

26. Joseph Smith & Sons, Inc. We recommend that the Board preserve that shipper's option to build-out and receive service from NS, which will be operating over nearby lines.

27. Millennium Petrochemicals Inc. We recommend that the Board require applicants to adhere to their representation to discuss alleged problems in serving the FINDERNE, NJ facility.

28. Ashta Chemical. We recommend that the Board require applicants to adhere to their representations to consult with Ashta concerning the routing of its hazardous materials shipments.

29. Port of Wilmington. The Board should direct applicants to discuss with the Port any problems concerning switching service and charges, and report back to the Board within 60 days.

LABOR, ENVIRONMENTAL, AND OTHER ISSUES

30. Labor Conditions.

- a. We recommend that the Board impose New York Dock conditions.
- b. We recommend that the Board make a clear statement that approval of this transaction does not indicate approval or disapproval of any of the collective bargaining agreement overrides that applicants have argued are necessary to carry out this transaction. Those issues should be negotiated if possible, or arbitrated as necessary. The Board should resolve them only as a last resort, giving deference to the arbitrator.
- c. The Board should rule that, under New York Dock, applicants may not require the transfer of the seniority rosters for clerical employees to Jacksonville or other points that require them to move their place of residence, unless those employees are actually being offered positions there. Issues relating to attrition protection and separation allowances should be dealt with in the implementing agreement process, consistent with the handling of those issues in other recent merger proceedings.

d. We recommend that applicants be directed, as suggested by UTU, to meet with labor representatives and to form a council or councils for purpose of promoting management-labor dialogue concerning implementation and safety issues.

31. Representations. During the course of this proceeding, applicants have made numerous representations to the effect that certain issues will be addressed, certain services will be provided, and so on. We recommend that the Board require applicants to adhere to all of those representations.

32. Oversight. We recommend that oversight specifically include monitoring of the effect of the so-called acquisition premium on the Board's jurisdictional threshold for rate complaints and on the Board's revenue adequacy determinations. In addition, we recommend specific oversight relative to Buffalo/Niagara Falls, New York City truck traffic, the Chicago Switching District, Amtrak and other passenger services, and smaller railroads.

33. Environmental Conditions. As to environmental conditions, we recommend that the Board impose the various mitigation measures recommended by the Section of Environmental Analysis in its Final Environmental Impact Statement.

OPERATIONAL MONITORING

We recommend the following as part of operational monitoring:

34. **Labor Implementing Agreements** - Applicants to provide monthly reports about the status of each of their labor implementing agreements.

35. **Construction and other Capital Projects** - Applicants to provide monthly reports about the status of each of their projects, including Shared Assets Areas and the Chicago Terminal area.

36. **Information Technology** - Applicants to provide monthly reports about the integration of each of their information systems with those of the former Conrail, including training.

37. **Customer Service** - Applicants to provide monthly reports about the integration of Conrail into each of their Centralized Customer Service Centers, including familiarizing customers.

38. **Power and Rolling Stock** - Applicants to provide a report covering the apportionment of the Conrail locomotive and freight car fleets.

39. **Car Management, Crew Management and Dispatching** - Applicants to provide a report certifying, as of "Day 1", that all employees have been fully trained and qualified to operate over the Conrail territories they will be assigned; are qualified to access and operate the information management systems related to crew management, time keeping, and train dispatching; and that train, traffic control and car management systems are in place, fully operational, and fully staffed.

40. **Shared Assets Areas** - Applicants to provide weekly reports about the operation by the Conrail Shared Assets Operator of the North Jersey, South Jersey/Philadelphia, and Detroit Shared Assets Areas

41. **Cleveland Operations** - Applicants to provide weekly reports about the operation of the Cleveland area, including construction projects.

42. **Chicago Gateway** - Applicants to provide weekly reports about the operation of the Chicago Terminal Area, including construction projects, beginning "Day 1".

43. **Yards and Terminals** - Applicants to provide weekly reports about the operation of approximately 40 terminal areas, including construction projects within those areas, beginning "Day 1".

44. **The Conrail Transaction Council** - Applicants to provide monthly information on the activities and recommendations of the Transaction Council

45. **Labor Councils** - Applicants to provide monthly reporting on the development and activities of labor councils.

STB Finance Docket No. 33388